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No. 425

In the Supreme Court of the United States

OCTOBER TERM, 1930

GROUP NO. 1 OIL CORPORATION, PETITIONER

v.

JAMES W. BASS, COLLECTOR OF INTERNAL REVENUE FOR THE UNITED STATES FOR THE FIRST DISTRICT OF TEXAS

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE RESPONDENT

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Texas Statutes:

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Texas act of March 10, 1925 (Texas Laws, 1925, c. 71, p. 225) 4

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OPINION BELOW

The opinion of the District Court (R. 39–51) is reported in 38 F. (2d) 680. The opinion of the Circuit Court of Appeals (R. 73–75) is reported in 41 F. (2d) 483.

JURISDICTION

The judgment sought to be reviewed was entered on June 18, 1930. (R. 75.) A petition for rehearing was denied on August 1, 1930. (R. 89.) The petition for certiorari was filed on September 6, 1930. The jurisdiction of this Court is invoked

under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether the net income derived by the petitioner from the sale of oil and gas produced from lands held under contract from the State of Texas is subject to Federal income tax.

The primary question to be decided in determining this issue is whether a Texas statute, providing that the property "shall be subject to taxation as is other property," is applicable and still in force. If this question is decided in the negative, then the question of the constitutionality of the tax is involved.

STATUTES INVOLVED

The statutes involved are set forth in the Appendix (pp. *i–lii*) to the brief in support of the petition for certiorari.

STATEMENT

The petitioner brought this action in the District Court for the Western District of Texas to recover income taxes paid under protest for the period beginning July 1, 1924, and ending March 31, 1928. (R. 2.) All of the income on account of which these taxes were collected was derived from the sale of oil and gas produced by the petitioner under instruments designated as "oil and gas leases" from the State of Texas. (R. 5, 33–34.) These leases are dated May 20, 1924 (R. 18), and July 14, 1924 (R. 23). The land upon which the petitioner car-

ried on its operations under these oil and gas leases from the State of Texas is a part of the public domain of that State and before the leases were executed had been appropriated by the State for the support and benefit of the University of Texas. (R. 9, 35.)

The leases in question expressly recite (R. 18, 23) that they are made pursuant to permits issued under the authority of Chapter 83 of the Acts of the Thirty-fifth Legislature of Texas of March 16, 1917. The relation of this statute, and of other Texas statutes, to the question now involved, is discussed in the argument, *infra*, pp. 3–4.

The District Court held that the United States could not constitutionally impose the tax and entered a decree for the petitioner. (R. 39–51, 54.) The District Court did not consider the Texas statute. On appeal, the Circuit Court of Appeals for the Fifth Circuit construed the Texas statute as permitting the tax and reversed the judgment of the court below. (R. 73–75.)

ARGUMENT

The leases in question were made pursuant to the provisions of the Act of the Texas Legislature of March 16, 1917 (Texas Laws, 1917, c. 83, p. 518; set forth at pp. *xii–xxv* of the brief in support of the petition for certiorari.) Section 27 of this Act provides:

> Rights acquired under this Act shall be subject to taxation as is other property.

There can be no question that the State had the power to withdraw from immunity the income from the property in question. *Shaw v. Gibson-Zahniser Oil Corporation*, 276 U. S. 575.

The petitioner contends that the language of Section 27 of the Texas Act of March 16, 1917, *supra*, does not apply to taxation by the Federal Government. Although there is room for argument as to this contention, we submit that it is a question of the interpretation of local law which does not warrant the consideration of this Court.

The petitioner further contends that Section 27 of the Texas Act of March 16, 1917, was repealed before the taxes now in question were levied or became due and payable. Although there was no express repeal, it is contended that the Texas Act of March 10, 1925 (Texas Laws, 1925, c. 71, p. 225; set forth at pp. *xxvi–xxviii* of the brief in support of the petition for certiorari) constituted an implied repeal. Whether this be true or not, we submit that the Act of 1925 by its express terms did not affect leases which had already been executed before the enactment of the 1925 Act. The last clause of Section 1 of the Texas Act of March 10, 1925, contains the following proviso:

> provided, oil and gas permits and leases outstanding shall not be affected by this Act except as provided in Section 14 hereof.

Section 14, referred to in this proviso, has no bearing on the issue in the instant case.

CONCLUSION

The precise question involved is not likely to arise in the future, since the Texas legislation in question has now been repealed; but there is pending in the United States District Court for the Western District of Pennsylvania an identical case involving a tax of over $1,500,000 imposed on income arising from a similar Texas contract.

If the construction of the Texas statute adopted by the Circuit Court of Appeals in the instant case is correct the constitutional questions argued by the petitioner in its brief in support of the petition for certiorari are not present in this case. If those constitutional questions were directly presented we should not oppose the petition for certiorari, but we submit that the question of the interpretation of the various Texas statutes which is primarily involved does not warrant the consideration of this Court.

Respectfully submitted.

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